

<sup>2</sup> The Board notes that, following the issuance of the April 5, 2011 OWCP decision, appellant submitted new evidence. The Board is precluded from reviewing evidence which was not before OWCP at the time it issued its final decision. See 20 C.F.R. § 501.2(c)(1).

## **FACTUAL HISTORY**

On December 12, 2008 appellant, then a 56-year-old engineering technician, filed a traumatic injury claim (Form CA-1) alleging that he sustained back, buttock, right elbow and upper arm injuries as a result of a slip and fall while exiting a vehicle in the performance of duty on December 9, 2008.

In a December 11, 2008 medical report, Dr. Jordan H. Greer, a Board-certified family practitioner, diagnosed fall with contusions and lumbar strain.

By decision dated January 12, 2009, OWCP accepted appellant's claim for sprain of back, lumbar region, abrasion of other, multiple or unspecified sites without infection. It originally handled appellant's claim administratively as a routine, uncontroverted case resulting in minimal or no time loss from work, which permitted medical payment up to \$1,500.00. As the employing establishment controverted the claim, it was required to formally adjudicate the claim. OWCP advised the employing establishment to continue appellant's regular pay for the period of disability not to exceed 45 days.

Appellant submitted a series of physical therapy notes from Jack Wade, a physical therapist, from January 22 to March 24, 2009.

In a January 13, 2009 report, Dr. Wade Erickson, a Board-certified family practitioner, diagnosed back and hip pain and opined that appellant could not work due to the pain. In a March 2, 2009 report, Dr. Erickson diagnosed cough and degenerative disc disease. He reported on March 16, 2009 that appellant suffered from back pain, that appellant had been off work and he had not yet received his disability rating report. Dr. Erickson diagnosed back strain in his July 15, 2009 attending physician's report and noted a history of the December 9, 2008 employment-related back injury. He opined that the period of total disability was December 9, 2008 to present.

In a July 28, 2009 letter, appellant's attorney requested OWCP to instruct the employing establishment to pay continuation of pay as it had accepted appellant's claim.

On August 7, 2009 the employing establishment directed appellant to return to work no later than August 17, 2009. It reported that he had been absent from work since January 5, 2009 and had not responded to its March 13, 2009 request for medical documentation by the April 9, 2009 deadline.

In an April 8, 2009 physical therapy report, Mr. Wade stated that appellant had limited capacity to perform functional work and daily activities due to his upper back, neck and shoulder pain. On April 15, 2009 he reiterated his findings of April 8, 2009.

Appellant submitted claims for compensation for disability for the period January 18, 2009 to August 28, 2010.

In an October 21, 2008 physical therapy report, Mr. Wade indicated that appellant was presently working full duty. In another October 21, 2008 report, he opined that appellant may be able to return to work with restrictions.

On December 1, 2008 the employing establishment suspended appellant for failure to follow instructions, insubordination, failure to follow leave procedures and being absent without leave. On December 6, 2008 appellant returned to duty. On May 6, 2009 he was suspended again on the same grounds. On May 20, 2009 appellant returned to duty. On December 1, 2009 the employing establishment issued him a notice of proposed removal. On December 11, 2009 appellant was terminated for excessive absence.

In an April 2, 2010 letter, OWCP informed appellant that continuation of pay was paid by the employing establishment and the medical evidence submitted must support total disability to be eligible. It advised him to contact the employing establishment for instructions on how to claim continuation of pay.

By letter dated September 10, 2010, OWCP acknowledged receipt of appellant's multiple claims for compensation for lost wages for the period January 18, 2009 to August 28, 2010. It informed him that it was unable to process them due to lack of supporting medical evidence. OWCP requested contemporaneous medical reports to establish causal relationship between appellant's disability for work due to the accepted conditions for the period claimed.

By decision dated October 12, 2010, OWCP denied appellant's claim for wage-loss compensation for the period January 18, 2009 to August 28, 2010 on the basis that the medical evidence submitted was not sufficient to support disability during the period claimed.<sup>3</sup>

### **LEGAL PRECEDENT**

Section 8102(a) of FECA<sup>4</sup> sets forth the basis upon which an employee is eligible for compensation benefits. That section provides: "The United States shall pay compensation as specified by this subchapter for the disability or death of an employee resulting from personal injury sustained while in the performance of his duty...." In general the term "disability" under FECA means "incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury."<sup>5</sup> This meaning, for brevity, is expressed as disability for work.<sup>6</sup> For each period of disability claimed, the employee has the burden of proving that he or she was disabled for work as a result of the accepted employment injury.<sup>7</sup> Whether a particular injury caused an employee to be disabled for employment and the duration of that disability are medical

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<sup>3</sup> By letter dated October 12, 2010, OWCP acknowledged receipt of appellant's claims for compensation for the period August 29 and September 25, 2010 and informed him that it was unable to process them due to lack of supporting medical evidence. It allotted him 30 days to submit the requisite evidence. As to this appeal, OWCP had not issued a final decision regarding those claimed periods of disability.

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> 20 C.F.R. § 10.5(f). *See also* William H. Kong, 53 ECAB 394 (2002); Donald Johnson, 44 ECAB 540, 548 (1993); John W. Normand, 39 ECAB 1378 (1988); Gene Collins, 35 ECAB 544 (1984).

<sup>6</sup> Roberta L. Kaaumoana, 54 ECAB 150 (2002).

<sup>7</sup> William A. Archer, 55 ECAB 674 (2004).

issues which must be proved by the preponderance of the reliable probative and substantial medical evidence.<sup>8</sup>

Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages. An employee who has a physical impairment causally related to his or her federal employment, but who nonetheless has the capacity to earn the wages he or she was receiving at the time of injury, has no disability as that term is used under FECA and is not entitled to compensation for loss of wage-earning capacity. When, however, the medical evidence establishes that the residuals of an employment injury are such that, from a medical standpoint, they prevent the employee from continuing in his or her employment, the employee is entitled to compensation for any loss of wage-earning capacity resulting from the employment injury.<sup>9</sup> The Board will not require OWCP to pay compensation for disability in the absence of any medical evidence directly addressing the particular period of disability for which compensation is claimed. To do so would essentially allow employees to self-certify their disability and entitlement to compensation.<sup>10</sup>

### ANALYSIS

The Board finds appellant is not entitled to wage-loss compensation for the period January 18, 2009 to August 28, 2010. While OWCP accepted that he sustained an employment injury, appellant bears the burden to establish through medical evidence that he was disabled for the claimed period and that his disability was causally related to his accepted injury.<sup>11</sup> The Board finds that appellant submitted insufficient rationalized medical evidence explaining how the December 9, 2008 employment injuries of lumbar back sprain or abrasions caused him to be disabled for work for the period January 18, 2009 to August 28, 2010.

Dr. Erickson diagnosed back and hip pain, back strain, cough and degenerative disc disease. He opined that appellant could not work due to the pain, that appellant had been off work and had not yet received his disability rating report and that the period of total disability resulting from the December 9, 2008 employment-related back injury was December 9, 2008 to present. Although Dr. Erickson provided a firm diagnosis and opined that appellant was disabled, he failed to provide a rationalized medical explanation as to how and why the residuals of the December 9, 2008 employment injury prevented him from continuing in his federal employment. The Board finds appellant has not met his burden of proof to establish that he is entitled to compensation for any lost wages with the submission of Dr. Erickson's reports.

Although in his December 11, 2008 report Dr. Greer diagnosed fall with contusions and lumbar strain, he failed to offer any medical opinion on whether appellant was disabled on the

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<sup>8</sup> *Fereidoon Kharabi*, 52 ECAB 291, 292 (2001).

<sup>9</sup> *Merle J. Marceau*, 53 ECAB 197 (2001).

<sup>10</sup> *Fereidoon Kharabi*, *supra* note 8.

<sup>11</sup> See *William A. Archer and Fereidoon Kharabi*, *supra* notes 7 and 8, respectively. See also *V.P.*, Docket No. 09-337 (issued August 4, 2009).

dates at issue due to his accepted conditions, his report is of diminished probative value. Therefore, appellant did not meet his burden of proof.<sup>12</sup>

The reports from Mr. Wade, a physical therapist, are of no probative value as he is not a physician under FECA.<sup>13</sup> As such, the Board finds that appellant did not meet his burden of proof with these submissions.

As appellant has not submitted sufficient rationalized medical explanation as to how the residuals of his December 9, 2008 employment injury prevented him from continuing in his employment, he has not met his burden of proof to establish that he is entitled to compensation for any employment-related disability.

On appeal appellant's attorney contends that appellant is entitled to continuation of pay. The Board notes that the January 12, 2009 acceptance letter from OWCP advised the employing establishment to continue appellant's regular pay for the period of disability not to exceed 45 days, but this was not a formal decision.<sup>14</sup> The October 12, 2010 OWCP decision did not address the issue of continuation of pay. On return of the case record, counsel may pursue this aspect with the employing establishment or request a decision from OWCP on whether appellant is entitled to continuation of pay.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to establish that he was disabled for the period January 18, 2009 to August 28, 2010 causally related to the December 9, 2008 employment injury.

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<sup>12</sup> See *Sandra D. Pruitt*, 57 ECAB 126 (2005). See also *V.P.*, *supra* note 11.

<sup>13</sup> 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides as follows: "(2) 'physician' includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law." See also *Paul Foster*, 56 ECAB 208, 212 n.12 (2004); *Joseph N. Fassi*, 42 ECAB 677 (1991); *Barbara J. Williams*, 40 ECAB 649 (1989).

<sup>14</sup> See *Robert H. Taylor*, Docket No. 01-1966 (issued March 26, 2002).

**ORDER**

**IT IS HEREBY ORDERED THAT** the October 12, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 21, 2011  
Washington, DC

Richard J. Daschbach, Chief Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board